

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-M) for Authorization, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2007.

Application 05-12-002
(Filed December 2, 2005)

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company (U 39-M).

Investigation 06-03-003
(Filed March 2, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING THE GREENLINING INSTITUTE'S MOTION
TO COMPEL TESTIMONY FROM THE CHIEF EXECUTIVE OFFICER**

On May 19, 2006, the Greenlining Institute (Greenlining) filed a motion to compel testimony from the chief executive officer (CEO) of Pacific Gas and Electric Company's (PG&E) parent company, PG&E Corporation. PG&E filed a response on May 23, 2006. This Ruling denies Greenlining's motion. This Ruling was made after consultation with the assigned Commissioner.

Greenlining's Motion

Greenlining moves for the issuance of a subpoena to compel the appearance of PG&E Corporation's CEO, Peter Darbee, for one hour of cross-examination during the forthcoming evidentiary hearings. Greenlining contends that Darbee sets the policy for both the utility and the holding company on the issues that Greenlining has raised in this proceeding. These issues include

supplier diversity, management diversity, and board of directors diversity. Greenlining asserts that only Darbee can address PG&E's "leadership strategy" with respect to these issues. Greenlining also believes that Darbee's appearance may substantially reduce Greenlining's cross examination of other PG&E witnesses, as many of these witnesses report to Darbee.

PG&E's Response

PG&E opposes Greenlining's motion. PG&E argues that the courts have recognized the potential for abuse when a litigant seeks the testimony of a senior officer. For example, in *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282, the plaintiff sought the deposition of defendant corporation's president and CEO. The court held that a corporate head may not be deposed unless the court first determines that the plaintiff has shown good cause, *i.e.*, that the official has unique or superior knowledge. Because of the potential for abuse, courts "generally do not allow a plaintiff's deposition power to automatically reach the pinnacle of the corporate structure." *Id.*, at 1288.

PG&E states that Greenlining seeks to compel the appearance of the highest ranking official at PG&E Corporation, even though PG&E already has several high ranking officers and knowledgeable witnesses available for cross examination on diversity issues. For instance, PG&E's CEO, Tom King, will be the lead off witness and is knowledgeable about diversity issues. Linda Cheng, Vice President and Corporate Secretary, will be available to testify about the process for identifying potential Board members. Steve Leder, the PG&E Director who manages workforce diversity, has provided direct and rebuttal testimony on that subject, has responded to numerous data requests, particularly focused on management diversity, and will be available for cross examination by Greenlining. Ron Battles, purchasing director, has provided direct and rebuttal

testimony and data request responses on supplier diversity, and will be available for cross examination by Greenlining. PG&E submits that Greenlining has not explained why the testimony provided by these witnesses will be inadequate.

PG&E represents that Darbee has provided no testimony on diversity issues and has not responded to data requests. PG&E states that Greenlining has not propounded any discovery seeking information from Darbee or about his role with regard to diversity. Nor has Greenlining attempted to show that Darbee has personal knowledge about any particular subject matter. In light of these circumstances, PG&E believes that compelling Darbee's appearance would serve no purpose other than harassment.

Ruling

Greenlining's motion for a subpoena to compel the appearance of the CEO of PG&E Corporation, Peter Darbee, is denied. PG&E has the burden of demonstrating that Application 05-12-002 should be granted. That burden includes the responsibility for the selection of the specific individuals to appear as witnesses in support of Application. PG&E has not chosen to offer Darbee as one of its witness; PG&E will bear the consequences of that decision.

Greenlining points out that some of PG&E's witnesses report to Darbee. This point is unpersuasive. Ultimately, all PG&E employee witnesses report to Darbee. It does not follow, however, that their testimony will be inadequate to satisfy Greenlining's legitimate needs.

More fundamentally, Greenlining has not shown that its due process rights will be prejudiced if Darbee does not appear to testify. PG&E has identified several witnesses, including PG&E's own CEO, Tom King, who will be available for cross examination and can address the issues raised by Greenlining. Greenlining has not established that Darbee is the only person who can provide

responsive testimony regarding the issues raised by Greenlining, or that Darbee has unique or superior knowledge about the issues raised by Greenlining.

Accordingly, Greenlining has not shown good cause to compel Darbee to testify.

Therefore, **IT IS RULED** that the motion of the Greenlining Institute for the issuance of a subpoena that orders Chief Executive Officer Peter Darbee to testify is denied.

Dated May 24, 2006, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying the Greenlining Institute's Motion to Compel Testimony from the Chief Executive Officer on all parties of record in this proceeding or their attorneys of record.

Dated May 24, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.